

BOARD OF APPEALS CASE NO. 5236

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BEFORE THE

APPLICANTS: A. Michael & Marianne Kavanagh

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ZONING HEARING EXAMINER

REQUEST: Variance to permit an existing retaining wall within the road right-of-way; 3723 Rush Road, Jarrettsville

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OF HARFORD COUNTY

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Hearing Advertised

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Aegis: 3/6/02 & 3/13/02

HEARING DATES: April 15, 2002

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Record: 3/8/02 & 3/15/02

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ZONING HEARING EXAMINER'S DECISION

The Applicant, A. Michael Kavanagh and Co-Applicant, Marianne Kavanagh, are requesting a variance, pursuant to Section 267-26C(6) of the Harford County Code, to allow an existing retaining wall and brick mailbox within the road right-of-way in an AG/Agricultural District.

The subject parcel is located at 3723 Rush Road, Jarrettsville, Maryland 21084 and is more particularly identified on tax Map 24, Grid 3F, Parcel 145, Lot 4. The parcel consists of 8.59± acres, is presently zoned AG/Agricultural and is entirely within the Fourth Election District.

Mr. Michael Kavanagh, Applicant, appeared and testified that an existing retaining wall was replaced 9 years ago. This wall and the replacement were located at the end of his driveway that is a rather steep area of the parcel. He added railroad ties initially to hold the earth but they rotted so he replaced them with interlocking brick, stone and a brick mailbox pillar (see Attachment 7 photos). Because it was a replacement project the Applicant did not think he needed a permit to construct the wall and brick pillar. In addition to the pillar, the Applicant stated that he sunk a substantial piece of steel in the ground in front of the brick pillar that is intended to stop a car. The overall appearance is that of a gated entrance with brick pillars on both sides. The speed limit on Rush Road is 25 miles per hour.

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The witness stated that the topography at the end of the driveway creates the uniqueness that in turn creates the need for the retaining wall. Removal of the wall will result in erosion and eventual collapse of that side of the applicant's driveway according to the witness. Mr. Kavanagh did not believe that leaving the retaining wall and brick mailbox in place would result in any adverse impacts. There are no lines of sight issues with the placement of these structures.

Mr. Anthony McClune, representative of the Department of Planning and Zoning, appeared and testified that the Department agrees that there is a unique topographical condition at this location, but concluded that the placement of the retaining wall and pillar (and the steel stake) created an unsafe hazard to motorists. The Department agreed to support a variance only if the retaining wall and pillar were moved back from the road 7 feet. The Department of Public Works, in a memo dated February 5, 2002, commenting on the Applicant's structures, stated that the present placement of the wood ties and brick pillar needed to be moved back from the road, specifically, the wood ties 7 feet and the brick pillar on the north side, 10 feet. In recommending approval, the Department included these conditions of relocation as conditions of approval. The concern of both the Department of Planning and Zoning and the Department of Public Works is that a car has little or no room for error and the impact to the brick pillar and steel post imbedded in the ground creates a hazardous condition.

Mr. Paul Gilka appeared in support of the application but expressed concern that the pillars and retaining wall may actually be on his property. Mr. Gilka explained that he owns the adjacent property and sold the Applicant his property and with that sale, conveyed the right of way that is the subject of the hearing.

CONCLUSION:

The Applicant, A. Michael Kavanagh, and Co-Applicant, Marianne Kavanagh, are requesting a variance, pursuant to Section 267-26C(6) of the Harford County Code, to allow an existing retaining wall and brick mailbox and brick pillar within the road right-of-way in an AG/Agricultural zone.

Section 267-26C(6) of the Harford County Code provides:

“No accessory use or structure, except fences, shall be located within any recorded easement area.”

Variances of this nature may be approved by the Board of Appeals pursuant to Section 267-11 of the Harford County Code, provided it finds by reason of the uniqueness of the property or topographical conditions that literal enforcement of the Code would result in practical difficulty and undue hardship. Further, the Applicant must show that the request will not be substantially detrimental to adjacent properties or will not materially impair the purpose of the Code or the public interest.

In this case, it is clear that the topography of the parcel at the driveway entrance creates a unique situation, however, the brick pillars, steel stake and wood ties are located so close to the road that a hazardous traffic condition has been created. Relief can be granted, however, in a fashion that will alleviate the traffic hazard and still provide relief to the Applicant from the provisions of the statute. Both the Department of Planning and Zoning and the Department of Public Works agree that moving these structures 7-10 feet back from the road will alleviate the hazard. Since the structures will still be within the right-of-way a variance is still necessary.

Based on the testimony of all parties in this case, the Hearing examiner recommends approval of the subject request subject to the following conditions:

1. The Applicant shall submit a detailed site plan and location drawing to the Department of Planning and Zoning for review and approval.
2. That the wood ties, brick mailbox pillar and metal stake all be pulled back from the road. The wooden ties shall be moved off the road 7 feet and the brick mailbox pillar, 10 feet from the edge of the road. The metal stake shall not be allowed.

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3. If the wall or brick pillar need to be relocated in the future to improve or maintain the road, the structures shall be moved at the Applicant's or then homeowner's expense.
4. The Applicant shall obtain any and all necessary permits and inspections.

Date: MAY 13, 2002

**William F. Casey
Zoning Hearing Examiner**